

REMARKS

Reconsideration and withdrawal of the rejections of the claims, in view of the amendments and remarks herein, is respectfully requested. Claims 11-12 are amended, and claims 2-3, 7 and 10 are canceled. The amendments are intended to advance the application and are not intended to concede to the correctness of the Examiner's position or to prejudice the claims present prior to amendment, which claims are presented in a continuation of the above-referenced application. Claims 1, 4-6, 8-9 and 11-19 are pending in this application.

In the Office Action, the Examiner noted that claim 8, 9 and 17 were joined with the elected group of claims, and so the status identifier for those claims hereinabove is "Original" rather than "Withdrawn".

A substitute Declaration/Oath is enclosed herewith to address the objection to the previously filed Declaration/Oath under 37 C.F.R. § 1.67(a).

The Abstract is amended to address the objection on page 3 of the Office Action.

The 35 U.S.C. § 112, Second Paragraph, Rejections

Claims 12 and 17 were rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. The amendments to claim 12 moot the § 112(2) rejection of claims 12 and 17.

The 35 U.S.C. § 101 and § 112(1) Rejections

Claims 10-12 and 17 were rejected under 35 U.S.C. § 101 on the grounds that the claimed invention is not supported by either a specific and substantial asserted utility or a well-established utility. Claims 10-12 and 17 were also rejected under 35 U.S.C. § 112, first paragraph, on the grounds that since the claimed invention is not supported by either a specific and substantial asserted utility or a well-established utility, one skilled in the art would not know how to use the invention. The cancellation of claim 10 obviates the "utility" rejections.

Claims 2-3, 7, 10-12, and 17 were rejected under 35 U.S.C. § 112, first paragraph. The cancellation of claims 2-3, 7 and 10, and the amendments to claims 11-12, render the § 112(1) rejection of claims 2-3, 7, 10-12 and 17 moot.

Therefore, withdrawal of the § 101 and § 112(1) rejections is respectfully requested.

The 35 U.S.C. § 102 and § 103 Rejections

Claims 10-12 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Duff et al. (Neurobiology of Diseases, 7:87 (2000)). Claims 10-12 and 17 were also rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over, Refolo et al. (Society for Neuroscience Abstracts, 25:790 (1999)). The cancellation of claim 10 renders the § 102(b) and § 103(a) rejections moot.

The Nonstatutory Double Patenting Rejection

Claims 10-12 and 17 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting rejection over claims 35, 41-42, 44, and 49 of co-pending application Serial No. 10/226,089. The cancellation of claim 10 renders the nonstatutory double patenting rejection moot.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

KAREN DUFF

By her Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date

June 27, 2006

By

Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of June, 2006.

Name

John D. Guspihera

Signature

John D. Guspihera